

EXHIBIT "I"
TO UNITED STATES' OPPOSITION TO
ABBOTT'S MOTION TO ENFORCE (D.E. 5276)

Tobiason, Virginia - Vol. III HIGHLY CONFIDENTIAL
Chicago, IL

January 22, 2008

559

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) MDL No. 1456
) Civil Action
THIS DOCUMENT RELATES TO:) #01-12257-PBS
United States of America,)
ex rel. Ven-A-Care of the) Judge Patti B. Saris
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

HIGHLY CONFIDENTIAL

DEPOSITION OF VIRGINIA TOBIASON - VOLUME III

JANUARY 22, 2008

(CAPTIONS CONTINUE ON FOLLOWING PAGES)

202-220-4158

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1	MS. TABACCHI: Object to the form.	1	-- that the physician had to fill in the CMNs --
2	THE WITNESS: Well, I followed any	2	we weren't allowed to fill in the CMNs -- that we
3	policies and procedures that we had, and I also	3	put the correct information on the claim form
4	conformed with anything that I was told.	4	regards to the diagnosis and the products. We
5	BY MS. ST. PETER-GRIFFITH:	5	made sure that what the pharmacy dispensed was
6	Q. Okay. When you say you followed any	6	what we put on the claim form.
7	policies and procedures, what policies and	7	We put a lot of emphasis on making sure
8	procedures?	8	that we got the patient's permission to bill and
9	A. Well, we did have policies and	9	that we followed appropriate claims submission
10	procedures on how to submit claims.	10	rules.
11	Q. Okay. How do you know that they were	11	BY MS. ST. PETER-GRIFFITH:
12	in compliance with state or federal anti-kickback	12	Q. Well, how did you know that -- what was
13	fraud and abuse -- or anti-kickback or fraud and	13	appropriate claims submission rules in term --
14	abuse laws or the federal False Claims Act?	14	how did you know that those rules complied with
15	MS. TABACCHI: Object to the form.	15	the anti-kickback laws or fraud and abuse laws
16	THE WITNESS: Well, our legal	16	and the False Claims Act?
17	department was involved with.	17	MS. TABACCHI: Object to the form.
18	BY MS. ST. PETER-GRIFFITH:	18	THE WITNESS: Well, we -- if we had any
19	Q. Were they involved with developing	19	-- I don't remember any specific questions. But
20	those policies and procedures?	20	we would have used our legal department.
21	A. Well, a lot of policies and procedures	21	BY MS. ST. PETER-GRIFFITH:
22	were involved with just how -- how often you did	22	Q. Did your legal department review your
	693		695
1	follow up, a lot of the just operational issues.	1	policies, practices, and procedures within home
2	But I don't know how this would apply	2	infusion to ensure that you were not violating
3	to -- the legal department approved all the	3	any fraud and abuse laws or the federal False
4	arrangements that we had.	4	Claims Act?
5	Q. Okay. But how did you as the manager	5	MS. TABACCHI: Object to the form.
6	of reimbursement services know that your staff	6	You can answer that question without
7	was not violating fraud and abuse laws or anti-	7	revealing the substance --
8	kick -- the anti-kickback statutes or the federal	8	THE WITNESS: Mm-hmm.
9	False Claims Act?	9	MS. TABACCHI: -- of any communications
10	MS. TABACCHI: Object to the form.	10	with counsel, if there are any.
11	THE WITNESS: Can you be more specific?	11	MS. ST. PETER-GRIFFITH: Well, hold on.
12	BY MS. ST. PETER-GRIFFITH:	12	Tina, are you taking the position that Abbott
13	Q. Sure. Did you have any way of	13	will not be relying upon any advice-of-counsel
14	monitoring whether or not the policies and	14	defense with regard to such compliance?
15	practices within your home infusion unit complied	15	MS. TABACCHI: I -- I only am
16	with state and federal fraud and abuse, anti-	16	cautioning the witness that to the extent that
17	kickback statutes, or the federal False Claims	17	she can answer yes or no or some similar answer
18	Act?	18	without revealing the substance of any specific
19	MS. TABACCHI: Object to the form.	19	conversation she had with counsel that that's my
20	THE WITNESS: Well, we made sure that	20	preference. I'm not instructing her not to
21	we followed medical necessity. There were rules	21	answer the question.
22	and regulations regarding medical necessity, that	22	I just don't want her to reveal the

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1	substance of a specific conversation until I have	1	and the federal False Claims Act?
2	a chance to discuss that with her. I don't know	2	MS. TABACCHI: Object to the form.
3	what privileged conversations might be triggered	3	THE WITNESS: I think that's a very
4	by your inquiry.	4	hard question to answer. The customers were
5	MS. ST. PETER-GRIFFITH: Can you read	5	ultimately responsible.
6	back the question, please?	6	BY MS. ST. PETER-GRIFFITH:
7	(Record read.)	7	Q. But did Abbott have a role in making
8	THE WITNESS: I don't remember	8	decisions regarding claims submission --
9	specifically if -- what -- what policies or	9	MS. TABACCHI: Object to the form.
10	procedures legal looked at. And I don't know --	10	BY MS. ST. PETER-GRIFFITH:
11	I can't say if they looked at them regards to the	11	Q. -- on behalf of the customer?
12	-- the fraud and abuse statutes. I just don't	12	A. In what regard?
13	know.	13	Q. In any regard.
14	BY MS. ST. PETER-GRIFFITH:	14	MS. TABACCHI: Object --
15	Q. Well, then how do you know that the	15	THE WITNESS: Well, I mean, there's a
16	policies, practices, and procedures within the	16	lot of things with claims submission. As I
17	home infusion reimbursement department didn't	17	mentioned, in terms of policies and procedures on
18	violate fraud and abuse laws or the False Claims	18	medical information, we would review these
19	Act?	19	procedures with the customer. We would review
20	MS. TABACCHI: Object to the form.	20	all our policies and procedures with the
21	THE WITNESS: We tried to bill as	21	customer. So we tried to adhere to what the
22	accurately as possible. We put -- our -- our	22	customer wanted.
	697		699
1	concern was getting the information correctly and	1	We did not set prices. The prices was
2	putting it on the claim form. Medical necessity,	2	the customer's responsibility.
3	we worried about that, and we also wanted to make	3	BY MS. ST. PETER-GRIFFITH:
4	sure that what we -- what products were used,	4	Q. Did you have an understanding that
5	what was actually dispensed to the -- to the	5	causing a false claim to be submitted violated
6	patient.	6	the anti-kickback statute or the federal False
7	BY MS. ST. PETER-GRIFFITH:	7	Claims Act?
8	Q. How did you ensure that your actual	8	MS. TABACCHI: Object to the form.
9	billing, meaning the charges that you charged to	9	THE WITNESS: Well, my understanding is
10	Medicare and Medicaid, did not violate fraud and	10	that, you know, there -- there is a False Claims
11	abuse laws, the anti-kickback statute, or the	11	Act, yes.
12	False Claims Act?	12	BY MS. ST. PETER-GRIFFITH:
13	MS. TABACCHI: Object to the form.	13	Q. Okay. And how did the home infusion
14	THE WITNESS: That wasn't my decision	14	unit ensure that when it submitted claims on
15	to the charges.	15	behalf of its home infusion clients that it was
16	BY MS. ST. PETER-GRIFFITH:	16	not violating any state fraud and abuse laws or
17	Q. Whose decision was it?	17	the anti-kickback statute?
18	A. The customer's.	18	MS. TABACCHI: Object to the form.
19	Q. Whose responsibility was it to ensure	19	Asked and answered.
20	that the billing and the claims submitted by	20	THE WITNESS: It was we followed any
21	Abbott on behalf of the customer complied with	21	legal re -- legal -- if legal had requirements,
22	fraud and abuse laws, the anti-kickback statute,	22	we followed them.

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<p style="text-align: right;">Page 768</p> <p>1 Q. Okay. Did that pertain to Medicaid and 2 Medicare fraud and abuse?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: It was pertaining to the 5 information we provided to customers about 6 reimbursement and the support services we 7 offered. Whether that was involved with the 8 fraud and abuse, I -- you'd have to ask legal.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Okay. Well, did you work with legal on 11 the policies?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. What do you recall about the content 16 concerning Medicaid and Medicare fraud and abuse?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I don't remember specific 19 discussions about how it connected to fraud and 20 abuse. But I -- that -- I -- I'm not as familiar 21 with the fraud and abuse statute as -- I'm just - 22 - I'm not a lawyer.</p>	<p style="text-align: right;">Page 770</p> <p>1 MS. TABACCHI: -- communications 2 between you and the lawyers.</p> <p>3 MS. ST. PETER-GRIFFITH: Okay. In 4 making that instruction, are you making a 5 representation at this time, Tina, that Abbott 6 does not intend to rely upon an advice-of-counsel 7 defense in this case?</p> <p>8 MS. TABACCHI: I don't understand what 9 your question is. I'm just trying to make sure 10 that we don't waive privilege as to some specific 11 communication that she had with a lawyer. It 12 sounded like that's where you were headed with 13 her.</p> <p>14 MS. ST. PETER-GRIFFITH: Well, to the 15 extent that the development of a policy or 16 procedure with Abbott counsel might be relied 17 upon at a later point in time as a defense in 18 this matter, I think I've got the right to 19 inquire as to the substance of those 20 communications unless you're willing to represent 21 to me right now that you don't -- that Abbott 22 does not intend to assert an advice-of-counsel</p>
<p style="text-align: right;">Page 769</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Okay. But as a reimbursement 3 individual, did you have concerns about ensuring 4 that the company that you worked for with regard 5 to reimbursement practices and procedures 6 complied with federal and state Medicaid and 7 Medicare fraud and abuse statutes?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I was concerned that 10 Abbott comply with all regulations.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Okay. And what did you do to ensure 13 that they were in compliance with federal and 14 state Medicare and Medicaid fraud and abuse 15 statutes?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I -- we -- we discussed 18 with legal certain things that we felt were 19 appropriate and not appropriate.</p> <p>20 MS. TABACCHI: I want to just caution 21 the witness not to reveal the substance of any --</p> <p>22 THE WITNESS: Right.</p>	<p style="text-align: right;">Page 771</p> <p>1 defense.</p> <p>2 MS. TABACCHI: I don't understand your 3 question.</p> <p>4 If you have a question for Ms. 5 Tobiason, go ahead.</p> <p>6 MS. ST. PETER-GRIFFITH: Are you 7 prepared to make that representation, Tina?</p> <p>8 MS. TABACCHI: No, I'm not making that 9 representation.</p> <p>10 MS. ST. PETER-GRIFFITH: But you're 11 instructing her not to answer --</p> <p>12 MS. TABACCHI: I didn't instruct her 13 not to answer.</p> <p>14 MS. ST. PETER-GRIFFITH: Could you read 15 back the question, please? (Record read.)</p> <p>17 THE WITNESS: That was the legal 18 responsibility.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. When you say that was the legal 21 responsibility, what do you mean? What do you 22 mean? That was the responsibility of the legal</p>

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1 MS. TABACCHI: -- communications

2 between you and the lawyers.

3 MS. ST. PETER-GRIFFITH: Okay. In
4 making that instruction, are you making a
5 representation at this time, Tina, that Abbott
6 does not intend to rely upon an advice-of-counsel
7 defense in this case?

8 MS. TABACCHI: I don't understand what
9 your question is. I'm just trying to make sure
10 that we don't waive privilege as to some specific
11 communication that she had with a lawyer. It
12 sounded like that's where you were headed with
13 her.

14 MS. ST. PETER-GRIFFITH: Well, to the
15 extent that the development of a policy or
16 procedure with Abbott counsel might be relied
17 upon at a later point in time as a defense in
18 this matter, I think I've got the right to
19 inquire as to the substance of those
20 communications unless you're willing to represent
21 to me right now that you don't -- that Abbott
22 does not intend to assert an advice-of-counsel

□

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1 defense.

2 MS. TABACCHI: I don't understand your
3 question.

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4 If you have a question for Ms.

5 Tobiason, go ahead.

6 MS. ST. PETER-GRIFFITH: Are you
7 prepared to make that representation, Tina?

8 MS. TABACCHI: No, I'm not making that
9 representation.

10 MS. ST. PETER-GRIFFITH: But you're
11 instructing her not to answer --

12 MS. TABACCHI: I didn't instruct her
13 not to answer.

14 MS. ST. PETER-GRIFFITH: Could you read
15 back the question, please?

16 (Record read.)

17 THE WITNESS: That was the legal
18 responsibility.

19 BY MS. ST. PETER-GRIFFITH:

20 Q. When you say that was the legal
21 responsibility, what do you mean? What do you
22 mean? That was the responsibility of the legal

□

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1 department?

2 A. Well, if there was a policy written
3 that they would review it to make sure it was in
4 compliance with the statutes.

5 Q. What discussions did you have with
6 counsel concerning that?

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10 THE WITNESS: About that. Well, I
11 don't remember any specific conversations with
12 counsel about fraud and abuse. We were creating
13 a policy regarding reimbursement information and
14 support.

15 BY MS. ST. PETER-GRIFFITH:

16 Q. Okay. What do you recall about your
17 conversation -- or let me ask you. Did you have
18 any conversations with anyone at Abbott about
19 whether in formulating these reimbursement
20 policies Abbott needed to look at or disclose its
21 AWP spreads, either historically or current?

22 MS. TABACCHI: Object to the form.

□ 774

1 THE WITNESS: AWP spreads. I don't
2 recall any discussions.

3 BY MS. ST. PETER-GRIFFITH:

4 Q. Were you ever advised that maintaining
5 high AWP spreads may contravene the False Claims
6 Act or anti-kickback statutes?

7 MS. TABACCHI: Object to the form.

8 I'm going to caution the witness not to
9 reveal the substance of communications with
10 counsel.

11 THE WITNESS: I'm not aware of any
12 conversations, no.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
State of Arizona v. Abbott) Judge Patti B. Saris
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPE DEPOSITION OF
VIRGINIA TOBIASON

HIGHLY CONFIDENTIAL

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Volume 2

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1 Q. One of the Abbott attorneys in this case, a
 2 guy by the name of Mark Haberberger. Do you know him?
 3 A. That name is familiar, but I don't remember
 4 him.
 5 Q. He testified as to receiving that HIMA
 6 newsletter and that's why I'm wondering if that ever
 7 circulated its way to you.
 8 A. I honestly don't remember it.
 9 Q. Well, when you said that if -- you saw
 10 information about reimbursement from outside sources,
 11 and you said trade associations, and you specifically
 12 identified HIMA. Can you tell me what specifically
 13 you would have done in terms of seeking information
 14 from HIMA?
 15 A. Well, HIMA would have probably generated some
 16 information on any regulations put out by the
 17 government. That might have been an area where I --
 18 if there was a specific notice in the Federal Register
 19 about reimbursement issues, or perhaps if there was
 20 any legislation that would have impacted our area.
 21 Q. Okay. The area being what?
 22 A. Infusion.
 23 Q. All right. Anything else?
 24 A. They would have done something if there was
 25 an FDA. Any -- any -- any government, you know, area

1 they would have notified, but I didn't -- I mean, I
 2 wasn't involved with the FDA still. But there were --
 3 you know, it would have been generally those things.
 4 Q. Other than receiving information you just
 5 described from HIMA, were there occasions when you
 6 actually reached out to anyone at HIMA to answer
 7 questions you had?
 8 A. Not that I -- not that I recall.
 9 Q. Okay.
 10 A. No.
 11 Q. You're thinking about it. My question is
 12 whether or not there was anyone you specifically ever
 13 contacted at HIMA.
 14 A. Well, Marsha Nescart handled, as I -- as I
 15 recall I think during this time period, it could have
 16 been Marsha if I had contacted HIMA.
 17 Q. Okay. Do you know what her title was?
 18 A. No. Probably vice president for something.
 19 Q. Okay. She was within the HIMA organization?
 20 A. Yes.
 21 Q. Do you know for how long she held that title?
 22 A. No.
 23 Q. You say you probably would have contacted
 24 her. Over what time frame would that have been?
 25 A. I think it might have been in -- in the early

1 to mid-'90s.
 2 Q. Okay. Anyone else you can think of having
 3 contacted at HIMA about any questions you might have
 4 had on reimbursement?
 5 A. No, not that I recall.
 6 Q. You also testified previously that you had
 7 occasion to speak to outside counsel when you had
 8 questions about reimbursement. I think you
 9 specifically identified Gordon Schatz at Reed Smith?
 10 A. Yes.
 11 Q. Okay. Are you aware that Reed Smith put out
 12 a newsletter for some of its pharmaceutical customers
 13 or clients that dealt with reimbursement issues?
 14 A. I have seen their newsletter recently.
 15 Q. Okay.
 16 A. I don't recall a newsletter during that time
 17 period.
 18 Q. It's possible they had one, you just don't
 19 recall as you sit here today?
 20 A. Exactly.
 21 Q. You do get their newsletter today?
 22 A. I do.
 23 Q. All right. Can you tell me what subject
 24 matters it covers today?
 25 A. Well, I think the latest one covered HIPAA,

1 FDA issues. They cover a broad range for all their
 2 clients. I don't recall specifics.
 3 Q. And knowing that you're getting it today, can
 4 you tell me how far back in time you can remember
 5 getting those newsletters from Reed Smith?
 6 A. I -- I can't give a time. I don't remember.
 7 Q. Okay. Do you recall that Reed Smith had a
 8 newsletter that addressed the OBRA amendments and in
 9 particular the anti-kickback statute?
 10 MS. TABACCHI: Object to the form.
 11 A. OBRA -- which OBRA?
 12 Q. (BY MR. HAVILAND) OBRA '90.
 13 A. OBRA -- no, I don't recall.
 14 Q. All right. It's possible you just don't
 15 remember the year?
 16 A. Oh, it's possible. I just don't remember.
 17 Q. Well, let me go back to what you testified
 18 about -- you had a specific recollection of having
 19 reached out at times to Gordon Schatz. Can you tell
 20 me what you recall about those occasions when you
 21 reached out to Mr. Schatz?
 22 MS. TABACCHI: I'm going to caution the
 23 witness not to reveal any attorney-client
 24 communications.
 25 THE WITNESS: Okay.